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Electronically filed on 2/11/10

6 Counsel for Americas Servicing Company,
7 and Bank of America National Association
8 as Successor by Merger to LaSalle Bank National
9 Association, as Trustee for Morgan Stanley
Mortgage Loan Trusts 2006-6AR

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

13 In Re:

14 Vanessa D. Campbell,

15 Debtor

16 Vanessa D. Campbell,

17 Plaintiff

19 vs.

20 Americas Servicing Company,
21 and Bank of America National Association
22 as Successor by Merger to LaSalle Bank National
23 Association, as Trustee for Morgan Stanley
24 Mortgage Loan Trusts 2006-6AR, DOE
Corporations I through X; and ROE ENTITIES XI
through XX,

25 Defendants.

Case No. 09-21995 MKN

Adv. No. 09-01289 MKN

Date: February 12, 2010

Time: 1:30 p.m.

Chapter 13

27 **Defendants' Opposition to Plaintiff's Emergency**
28 **Motion for Preliminary Injunction**

COMES NOW, Defendants, by and through counsel, and file this opposition stating as follows:

1. Undisputed Facts

The facts of this case are not in dispute. This Court need only apply the current law concerning the effect of multiple bankruptcies being filed on a pending foreclosure.

The initial foreclosure sale was set for May 1, 2009, but this Plaintiff filed her first bankruptcy case, that same day, thereby staying any sale. Case No. 09-16968 here in the Las Vegas valley.

Pursuant to both state and federal law, the foreclosure sale was orally postponed to July 1, 2009. (See "Certificate of Postponement" attached hereto as exhibit "A"). This practice is very common to preserve a foreclosure sale when a bankruptcy is filed to see if the debtor properly complies with bankruptcy procedure.

The Plaintiff's first bankruptcy case was dismissed on June 25, 2009, thereby ending any automatic stay or protection from bankruptcy.

The foreclosure sale was held on July 1, 2009, extinguishing Plaintiff's rights to the subject property. Attached is a copy of the Trustee's Deed Upon Sale as exhibit "B").

The Plaintiff filed her second bankruptcy on July 7, 2009, case number 09-21995, resulting in a temporary stay for thirty (30) days and she did not file a motion to extend the stay during this period.

The subject property was initially reported as vacant when eviction proceedings were initiated but Defendants later learned that was not the case. An unlawful detainer action was filed in the Justice Court Las Vegas Township on December 2, 2009, seeking a writ of restitution. Case 09C-047327.

1 Finally on January 21, 2010, the Las Vegas Justice Court held the unlawful detainer
2 hearing, listened to the parties' arguments, and ordered that a writ issue to evict the
3 Plaintiff from the subject premises. However, the justice court judge stayed the
4 execution of the writ until February 20, 2010.
5

6 **2. Law and Argument**

7 The standard for a preliminary injunction is outlined in Rule 65 of the Federal
8 Rules of Civil Procedure, which Bankruptcy Rule 7065 makes applicable in adversary
9 proceedings. The Rule is clear that a party seeking an injunction must meet *all* of the
10 elements.
11

12 Ordinarily, a plaintiff seeking a preliminary injunction must demonstrate that it is
13 "[1] likely to succeed on the merits, [2] that he is likely to suffer irreparable harm
14 in the absence of preliminary relief, [3] that the balance of equities tips in his
15 favor, and [4] that an injunction is in the public interest.

16 Am. Trucking Ass'ns v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009)

17 The Plaintiff cannot succeed on the allegations contained in her complaint. She
18 mistakenly asserts in paragraph eight (8) of the complaint that once a foreclosure sale is
19 stayed by a bankruptcy filing, a debtor must be given a subsequent notice of twenty-one
20 (21) days pursuant to NRS 107.080.
21

22 A review of that statute clearly shows that there does not exist such a requirement.
23 In fact, for a long time, Nevada law has allowed for oral postponements of a foreclosure
24 sale.

25 Ordinarily where, in the first instance, notice of sale has been given by
26 publication and posting as required by statute, postponements may
27 lawfully be made by oral public proclamation only
28

1 McLaughlin v. Mutual Building & Loan Ass'n of Las Vegas, 57 Nev. 181, 60 P.2d 272
2 (Nev. 1936). It is interesting to note that the sale in McLaughlin was orally postponed
3 over thirty (30) times.

4 The Nevada legislature recently placed a limit on the number of times a
5 foreclosure can be orally postponed to three (3). Once a creditor reaches this number, it
6 must proceed with another Notice of Sale. The statute reads:

8 **Oral postponement of sale.**

- 9 1. If a sale of property pursuant to NRS 107.080 is postponed
10 by oral proclamation, the sale must be postponed to a later
11 date at the same time and location.
12 2. If such a sale has been postponed by oral proclamation three
13 times, any new sale information must be provided by notice
14 as provided in NRS 107.080.

15 See NRS 107.082.

16 Furthermore, the Ninth Circuit has properly recognized that the continuance of a
17 trustee's sale is not a violation of the automatic stay. See generally, First Nat'l Bank of
18 Anchorage v. Roach (In re Roach), 660 F.2d 1316 (9th Cir. 1981). It is clear that the
19 Defendants simply followed both State and Federal law in conducting the foreclosure
20 sale.

21 Finally, because this present case is Plaintiff's second bankruptcy, 11 U.S.C.
22 362(c)(3)(A) provided for a thirty (30) day stay upon the filing of this second case which
23 expired on August 7, 2009. Subsection (B) of this statute allows a party to file a motion
24 to continue this temporary stay but Plaintiff did not take advantage of this potential relief.
25 As a result, currently there is not an automatic stay prohibiting Defendants from
26 proceeding with the eviction proceedings.
27
28

1 In conclusion, the above statutory and case law clearly demonstrates that this
2 Plaintiff does not have a reasonable likelihood of success on the merits as applied to the
3 undisputed facts.

4
5 WHEREFORE, Defendants ask that this Court deny the Plaintiff's request for a
6 preliminary injunction.

7 Dated this 10th day of February, 2010.

8
9 Respectfully Submitted:

10 WILDE & ASSOCIATES

11 By /s/ Gregory Wilde

12 **GREGORY L. WILDE, ESQ.**

13 Attorney for Defendants
14
15

16 **Certificate of Service**

17 I certify that on February 11, 2010, I faxed a copy of the foregoing document to
18 the Plaintiff's counsel at the following fax number.

19 Samuel A. Schwartz, Esq.

20 Fax No. (702) 385-2741
21
22

23
24
25
26
27
28



EXHIBIT "A"



CERTIFICATE OF POSTPONEMENT

T.S. NO. / TRUSTOR: **0843364ASRNV/VANESSA CAMBELL, A SINGLE WOMAN**
ASAP NO. / TRUSTEE: **3056721/ NDSC**

I, the undersigned, do hereby certify that on **05/01/2009** at the hour of **10:00 AM** at the same place as originally fixed by the Trustee in the Notice of Sale, did in my capacity as an authorized Agent of LPS-ASAP, postpone the holding of the Sale scheduled for said time and place, at the same place designated in the Notice of Sale in said matter. Such postponement was given by public declaration wherein it was announced that the new date of the sale is **07/01/09**, the new time of the sale is **10:00AM** and the place of sale is the same place as originally fixed by the Trustee in the Notice of Sale.

FURTHER, it was announced that the reason for the postponement was:

Bankruptcy

I certify under penalty of perjury that the foregoing is true and correct.

BY: **SCOTT SIBLEY**

Date: **05/01/09**

3210 El Camino Real Ste 200, Irvine, California 92602

Main Line (714) 724-7500 Toll Free (800) 683-2468

EXHIBIT "B"

3-1

20090713-0003558

Fee: \$15.00 RPTT: \$1,111.80

N/C Fee: \$0.00

07/13/2009 11:01:17

T20090241433

Requestor:

DOCUMENT PROCESSING SOLUTIONS INC

Debbie Conway OSA

Clark County Recorder Pgs: 3

RECORDING REQUESTED BY :

WHEN RECORDED MAIL TO :

Bank of America National
2525 E. Camelback Road, Suite 200
Phoenix, AZ 85016

FORWARD TAX STATEMENTS TO:

Bank of America National
7495 New Horizon Way
Mail Stop - NAC # X3902-01F
Frederick, MD 21703

APN: 176-17-517-055

NDSC File No. : 08-43364-ASR-NV

Loan No. : 1127111329

Title Order No. 0005 602106927

TRUSTEE'S DEED UPON SALE

Transfer Tax : \$1,111.80

The Grantee herein WAS the Beneficiary

The amount of the unpaid debt was \$218,000.00

The amount paid by the Grantee was \$218,000.00

The property is in the city of LAS VEGAS, County of CLARK, State of NV.

National Default Servicing Corporation, an Arizona Corporation, as the duly appointed Trustee (or successor Trustee or Substituted Trustee), under a Deed of Trust referred to below, and herein called "Trustee", does hereby grant without any covenant or warranty to :

Bank of America National Association as Successor by Merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trusts 2006-6AR

herein called Grantee, the following described real property situated in CLARK County :

LOT 104, BLOCK 4, OF PARCEL 14 AT RHODES RANCH UNIT 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 116 OF PLATS, PAGE 71, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

This conveyance is made pursuant to the powers conferred upon Trustee by said Deed of Trust executed VANESSA CAMPBELL, A SINGLE WOMAN, as Trustor, recorded on 01/23/06, Instrument No. 20060123-0004223 Official Records in the Office of the County Recorder of CLARK County, NV.

All requirements of law regarding the recording and mailing of copies of the Notice of Default and Election to Sell, the recording, mailing, posting, and publication of the Notice of Trustee's Sale have been complied with.

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 07/01/09 Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, which amount was \$218,000.00.

Dated : 7/2/09

National Default Servicing Corporation, an Arizona Corporation

By: Jamie Gorsuch
Jamie Gorsuch, Trustee Sales Officer

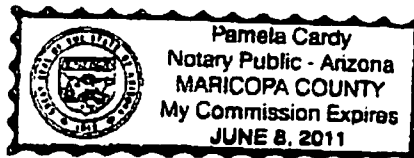
STATE OF ARIZONA
COUNTY OF MARICOPA

On 7/2, 2009, before me, Pamela Cardy, a Notary Public for said State, personally appeared Jamie Gorsuch, who personally known to me (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Pamela Cardy



STATE OF NEVADA
DECLARATION OF VALUE FORM

1 Assessor Parcel Number(s)

a) 176-17-517-055

b) _____

c) _____

d) _____

2 Type of Property:

- a) ☐ Vacant Land b) ☒ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a Total Value/Sales Price of Property \$218,000.00
b Deed in Lieu of Foreclosure Only (value of property) _____
c Transfer Tax Value: \$218,000.00
d Real Property Transfer Tax Due \$1,111.80
4. **If Exemption Claimed:**
a Transfer Tax Exemption per NRS 375.090. _____
b Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____%

The undersigned declare and acknowledges, under penalty of perjury, pursuant to NRS, 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature

Jamie Gorsuch
Jamie Gorsuch, 08-43364-ASR-NV

Capacity Grantor

Signature

SELLER (GRANTOR) INFORMATION

National Default Servicing Corporation
2525 E. Camelback Rd., Suite 200
Phoenix, AZ 85016

Capacity Grantee

BUYER (GRANTEE) INFORMATION

Bank of America National
7495 New Horizon Way
Mail Stop - NAC # X3902-01F
Frederick MD 21703

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: ServiceLink

Escrow #: 1002106927

Address: 560 E. Hospitality Lane, Suite 150
San Bernardino, CA 92411

City: _____

State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

3558